



4191-02U

## SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2012-0066]

RIN 0960-AH52

Change in Terminology: “Mental Retardation” to “Intellectual Disability”

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to replace the term “mental retardation” with “intellectual disability” in our Listing of Impairments (listings) that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Social Security Act (Act) and in other appropriate sections of our rules. This change would reflect the widespread adoption of the term "intellectual disability" by Congress, government agencies, and various public and private organizations.

DATES: To ensure that your comments are considered, we must receive them no later than (INSERT DATE THAT IS 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

ADDRESSES: You may submit comments by any one of three methods – Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2012-0066, so that we may associate your comments with the correct

regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2012-0066. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966-2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-1020. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213, or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

The term “intellectual disability” is gradually replacing the term “mental retardation” nationwide. Advocates for individuals with intellectual disability have rightfully asserted that the term “mental retardation” has negative connotations, has become offensive to many people, and often results in misunderstandings about the nature of the disorder and those who have it.

In October 2010, partly in response to these concerns, Congress passed Rosa’s Law, which changed references to “mental retardation” in specified Federal laws to “intellectual disability,” and references to “a mentally retarded individual” to “an individual with an intellectual disability.”<sup>1</sup> Rosa’s Law also required the Federal agencies that administer affected laws to make conforming amendments to their regulations.

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<sup>1</sup> Public Law 111-256.

Rosa’s Law did not specifically include titles II and XVI of the Act within its scope, and therefore, did not require us to make any changes to our existing regulations. However, consistent with the concerns expressed by Congress when it enacted Rosa’s Law, and in response to numerous inquiries from advocate organizations, we propose to revise our rules to use the term “intellectual disability” in the name of our current listings and in our other regulations. In so doing, we would join other agencies that have responded to the spirit of the law, even though Rosa’s Law did not require them to change their terminology.<sup>2</sup>

However, unlike other agencies that adopted the use of the term “intellectual disability,” we are bound by a legal definition of the word “disability.” The Act and our regulations define “disability” in specific terms and outline the requirements that an individual must meet in order to establish entitlement or eligibility to receive disability benefits.<sup>3</sup> As a result, a person who has a medically determinable intellectual impairment, including intellectual disability, is not “under a disability” within the meaning of the Act until we have determined that the impairment satisfies all of the statutory and regulatory requirements for establishing disability; that is, until we find that the impairment results in an inability to do any substantial gainful activity, or, in a child under title XVI, results in marked and severe functional limitations. Consequently, the use of the term

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<sup>2</sup> See 77 FR 29002, 77 FR 6022-01.

<sup>3</sup> Sections 216(i)(1) and 1614(a)(3)(B) – (C) of the Act.

"intellectual disability" would not mean that we will necessarily find an individual disabled within the meaning of the Act.

Under this proposed change, an individual would be able to file a claim based on having "intellectual disability" under our rules. We may find the individual to have a medically determinable intellectual impairment that is severe at the second step of our sequential evaluation process, but that does not meet or equal the requirements of our current listings. At the fourth and fifth steps of our sequential evaluation process, we may find that an individual with a medically determinable intellectual impairment has the residual functional capacity to perform his or her past relevant work, or has the capacity to perform a significant number of jobs in the national economy, and is therefore not "under a disability" as defined in the Act.

#### What changes are we proposing?

We propose to replace the term "mental retardation" with "intellectual disability" wherever it appears in the listings and in our other rules. The proposed changes would affect listings 12.05 and 112.05; the introductions to 10.00, the Part A adult listings, and 110.00, the Part B child listings for impairments that affect multiple body systems; the introductions to 12.00, the Part A adult listings, and 112.00, the Part B child listings for mental disorders; and sections 404.1513(a)(2) and 416.913(a)(2). We also propose to replace the words "mentally retarded children" with "children with intellectual disability" in the examples in sections 404.2045(a) and 416.645(a).

As part of our ongoing commitment to update and improve our listings, we published a Notice of Proposed Rulemaking (NPRM) on August 19, 2010, in which we proposed to revise the criteria in the listings that we use to evaluate claims involving mental disorders in adults and children under titles II and XVI of the Act.<sup>4</sup> We are currently considering the comments received in response to the NPRM in our revision of the mental disorders listings. The proposed language change in this rule is not in response to that NPRM. Additionally, this nomenclature change would not make any other changes to our current listings or other rules and therefore would not affect how we evaluate a claim based on “intellectual disability.”

## Regulatory Procedures

### Executive Order 12866, as supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

### Regulatory Flexibility Act

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<sup>4</sup> 75 FR 51336. We also published a notice with a limited reopening of the NPRM comment period on November 24, 2010, at 75 FR 71632.

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

#### Paperwork Reduction Act

While this proposed rule will not impose new public reporting burdens, it will require changes to existing OMB-approved information collections that contain the language referenced in this rule. We will make changes to the affected information collections via separate non-substantive change requests.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and No. 96.006—Supplemental Security Income.)

#### List of Subjects

#### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 18, 2013.

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Michael J. Astrue,  
Commissioner of Social Security.



For the reasons set out in the preamble, we propose to amend 20 CFR chapter III as follows:

**PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY  
INSURANCE**

**Subpart P—Determining Disability and Blindness**

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)-(b) and (d)-(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)-(b) and (d)-(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189, sec 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

**§ 404.1513 [Amended]**

2. Amend § 404.1513(a)(2) by removing the words “mental retardation” and adding in their place “intellectual disability”.

**Appendix 1 to Subpart P of Part 404 [Amended]**

3. Amend Appendix 1 to subpart P of part 404 by:

a. Removing the words “mental retardation” and adding in their place “intellectual disability” wherever they occur;

b. Removing the words “Mental retardation” and adding in their place “Intellectual disability” wherever they occur; and

c. Removing the words “Mental Retardation” and adding in their place “Intellectual Disability” wherever they occur.

#### **Subpart U—Representative Payment**

4. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

#### **§ 404.2045 [Amended]**

5. Amend the example in § 404.2045(a) by removing the words “mentally retarded children” and adding in their place “children with intellectual disability”.

### **PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

#### **Subpart F—Representative Payment**

6. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1613(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

#### **§ 416.645 [Amended]**

7. Amend the example in § 416.645(a) by removing the words “mentally retarded children” and adding in their place “children with intellectual disability”.

#### **Subpart I—Determining Disability and Blindness**

8. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a), and 15, Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

#### **§ 416.913 [Amended]**

9. Amend § 416.913(a)(2) by removing the words “mental retardation” and adding in their place “intellectual disability”.